United Nations S/AC.37/2003/(1455)/7

Security Council

Distr.: General
17 April 2003

Original: English

Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 16 April 2003 from the Permanent Mission of Tonga to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Kingdom of Tonga to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) and has the honour to refer to the latter's note of 4 March 2003.

The Permanent Mission of Tonga also has the honour to enclose the report of the Kingdom of Tonga pursuant to paragraphs 6 and 12 of resolution 1455 (2003), as requested (see annex).

03-35173 (E) 120503

Annex to the note verbale dated 16 April 2003 from the Permanent Mission of Tonga to the United Nations addressed to the Chairman of the Committee

Report of the Kingdom of Tonga to the Security Council Committee established pursuant to resolutions 1267 (1999), pursuant to paragraphs 6 and 12 of resolution 1455 (2003)

I. Introduction

Tonga continues to actively participate in domestic, regional and international efforts to facilitate compliance with UNSCR 1373 (2002) and UNSCR 1455 (2003). The Bali bombing incident in 2002 however has brought terrorism much closer to the Pacific region, although the threat of terrorism in Tonga is still very minimal. There are no activities by Usama Bin Laden, Al Qaida, the Taliban or their associates in Tonga, and every effort has been made to ensure that the situation does not change in the future.

II. Consolidated List

2. *How has the 1267 (1999) Committee's List been incorporated within your legal system and your administrative structure, including financial supervision, police, immigration control, customs and consular authorities?*

The 1267 (1999) Committee's List has been incorporated within the legal system and administrative structure including financial supervision, police, immigration control, customs and consular authorities.

3. *Have you encountered any problems with the implementation with regards to the names and identifying information as currently included in the List? If so, please describe these problems.*

Tonga has not encountered any problems with implementation with regards to identifying information as currently included in the List.

4. *Have your authorities identified inside your territory any designated individuals or entities? If so, please outline the actions that have been taken.*

There are no known individuals or entities associated with Usama Bin Laden or members of the Taliban or Al Qaida on Tongan territory.

5. ***Please submit to the Committee, to the extent possible, the names of individuals or entities associated with Usama Bin Laden or members of the Taliban or Al-Qaida that have not been included in the List, unless to do so would compromise investigations or enforcement actions.***

There are no known individuals or entities associated with Usama Bin Laden or members of the Taliban or Al Qaida on Tongan territory that are not included in the list.

6. ***Have any listed individuals or entities brought a lawsuit or engaged in legal proceedings against your authorities for inclusion in the List? Please specify and elaborate, as appropriate.***

It therefore follows from questions (4) and (5) above that no individual or entities have brought a lawsuit or engaged in legal proceedings against the Tongan authorities for inclusion in the List.

7. ***Have you identified any of the listed individuals as nationals or residents of your country? Do your authorities have any relevant information about them not already included in the List? If so, please provide this information to the Committee as well as similar information on listed entities, as available.***

No individuals or residents have been identified as residing in Tonga.

8. ***According to your national legislation, if any, please describe measures taken to prevent entities and individuals from recruiting or supporting Al-Qaida members in carrying out activities inside your country, and to prevent individuals from participating in Al Qaida training camps established in your territory or in another country.***

The Criminal Offences Act (Cap.18) deals with various issues including under Part II - Abetment, harbouring, criminals, conspiracy etc, which criminalizes the recruitment, support of carrying out criminal

activities inside the country or participating in Al Qaida training camps established in country or in another country.

III. Financial and Economic Asset Freeze

Under the sanctions regime (paragraph 4(b) of resolution 1267 (1999) and paragraphs 1 and 2 (a) of resolution 1390 (2002)), States are to freeze without delay the funds and other financial assets or economic resources of the listed individuals and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, assets or resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory.[1]

9. ***Please describe briefly:***

- **The domestic legal basis to implement the asset freeze required by the resolution above;**

Section 19 of the Money Laundering and Proceeds of Crime Act 2000 allows an authorized officer to seize and detain property, including cash, which is being imported into or exported from Tonga, if he has reasonable grounds for suspecting that it is derived from a serious offence, or intended by any person for use in the commission of a serious offence.

Section 2 - "property" means cash and all other real or personal property of every description, whether situated in Tonga or elsewhere and whether tangible or intangible: "proceeds of crime" means any property derived or realized directly or indirectly from a serious offence, includes income, capital or other economic gains derived or realized from such property at any time since the offence.

---

[1] For the purpose of implementation of the financial prohibitions in this sanctions regime, "economic resources" is defined to mean assets of every kind, whether tangible, movable or immovable (From the International Convention for the Suppression of the Financing of Terrorism)

Section 28 - where a person is convicted of a serious offence, the Attorney General may, no later than 6 months after the conviction, apply to Supreme Court for a confiscation order against property that is tainted property in respect of the offence, and/or pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the offence.

- Any impediments under your domestic law in this context and steps taken to address them.

There are no impediments under our domestic law in this context.

10. Please describe any structure or mechanisms in place within your Government to identify and investigate Usama Bin Laden, Al Qaida or Taliban related financial networks, or those who provide support to them or individuals, groups, undertakings and entities associated with them within your jurisdiction. Please indicate, as appropriate, how your efforts are coordinated nationally, regionally, and/or internationally.

The National Reserve Bank of Tonga has distributed to all banks in Tonga, a list of terrorist associated names released by the USA and the ETA. All banks are required to report to the Reserve Bank any transactions involving and/or suspected to be linked to any individual/organization in the list.

11. Please convey the steps banks and/or other financial institutions are required to take to locate and identify assets attributable to, or for the benefit of, Usama bin Laden or members of Al Qaida or the Taliban, or associated entities or individuals. Please describe any "due diligence" or "know your customer" requirements. Please indicate how these requirements are enforced, including the names and activities of agencies responsible for oversight.

Section 12 of the Money Laundering Act requires a financial institution or cash dealer to take reasonable measures to satisfy itself as to the true identity of its customers. Financial institutions/cash dealers are further required to identify whether their customers are acting on

behalf of another person, if so, then they are required to take reasonable measures to establish the true identity of that person on whose behalf or whose ultimate benefit the customers may be acting in the proposed transaction. The banks have their own "know your customer" policies, which the Reserve Bank (who is also the Transaction Reporting Authority) have checked and confirmed to be satisfactory within the requirements of the Act.

Section 21 - the Supreme Court, upon the application by the Transactions Reporting Authority, may make an order, for the purposes of determining whether any property belongs to any person suspected to be linked to any serious offence, that any document relevant to identifying, locating or quantifying any property, or identifying or locating any document necessary for the transfer of any such property belonging to that person be delivered to the TRA.

12. Resolution 1455 (2003) calls on Member States to provide "a comprehensive summary of frozen assets of listed individuals and entities". Please provide a list of the assets that have been frozen in accordance with this resolution. This list should also include assets frozen pursuant to resolution 1267 (1999), 1333 (2001) and 1390 (2002). Please include to the extent possible, in each listing the following information:

- *Identification(s) of the person or entities whose assets have been frozen;*
- *A description of the nature of the assets frozen (i.e. bank deposits, securities, business assets, precious commodities, works of art, real estate property, and other assets);*
- *The value of assets frozen.*

To date there have not been any cases requiring any assets to be frozen under the Money Laundering and Proceeds of Crime Act 2000.

13. Please indicate whether you have released pursuant to resolution 1452 (2002) any funds, financial assets or economic assets that had previously been frozen as being related to Usama Bin Laden or members

of the Al Qaida or the Taliban or associated individuals or entities. If so, please provide reasons, amounts unfrozen or released and dates.

Refer to reply to question (12) above.

14 Pursuant to resolution 1455 (2003), 1390 (2001), 1333 (2001) and 1267 (1999), States are to ensure that no funds, financial assets or economic resources are made available, directly or indirectly to Listed individuals or entities or their benefit, by nationals or by any persons within their territory. Please indicate the domestic legal basis, including a brief description of laws, regulations and/procedures in place in your country to control the movements of such funds or assets to designated individuals and entities. This section should include a description of:

- *The methodology, if any, used to inform banks and other financial institutions of the restrictions placed upon individuals or entities listed by the Committee, or who have otherwise been identified as members or associates of Al Qaida or the Taliban. This section should include an indication of the types of institutions informed and the methods used;*

- *Required bank reporting procedures, if any, including the use of Suspicious Transaction Reports (STR), and how such reports are reviewed and evaluated;*

Section 14 of the Money Laundering and Proceeds of Crime Act 2000 requires financial institutions and cash dealers to report transactions to the Transactions Reporting Authority as soon as possible but no later than 3 working days after forming that suspicion and wherever possible before the transaction is carried out.

Section 11 (2) (b) - the Transactions Reporting Authority shall send any suspicious transaction report to the appropriate law enforcement authorities if the report gives the Transactions Reporting Authority reasonable grounds to suspect that the transaction is suspicious.

Attached is the standard Form required by the Reserve Bank to be completed by licensed financial institutions and licensed foreign exchange dealers. Licensed Financial Institutions and Licensed Foreign Exchange Dealers are required by the Reserve Bank to confirm in writing if there were no suspicious transactions encountered during the month.

- ***Requirements if any placed on financial institutions other than banks to provide STR, and how reports are reviewed and evaluated;***

Financial institutions and cash dealers include non banks who carry on a whole range of financial activities listed under the definition in section 2, therefore non banks are covered by section 14.

- ***Restrictions or regulations, if any, placed on the movements of precious commodities such as gold, diamonds and other related items;***

Section 2 - "property" means cash and all other real or personal property of every description, whether situated in Tonga or elsewhere and whether tangible or intangible (this covers precious commodities); "proceeds of crime" means any property derived or realized directly or indirectly from a serious offence.

Section 19 - any authorized officer may seize and detain any property, which is being imported into or exported from Tonga if he has reasonable grounds for suspecting that it is derived from a serious offence, or intended to be used in the commission of a serious offence.

- Restrictions or regulations, if any, applicable to alternate remittance systems such as or similar to "hawala", as well as on the charities cultural and other non profit organizations engaged in the collection and disbursement of funds for social or charitable purposes.

Alternate remittance systems and charities cultural and other non profit organizations are also covered by if they are licensed as authorized dealers under the Foreign Exchange Control (Amendment) Regulations 2000.

IV. Travel Ban

Under the sanctions regime, all States shall take measures to prevent the entry into or transit through their territories of Listed individuals (paragraph 1 of resolution 1455 (2003), paragraph 2b of resolution 1390 (2002).

15. ***Please provide an outline of the legislative and/or administrative measures, if any, taken to implement the travel ban.***

A new visitor's visa regime was introduced into the Kingdom whereby all 'high risk' countries, including all passport holders from middle eastern territories are required to apply for a visitor's visa prior to entry into the Kingdom.

The issuance of visas is undertaken directly from the Immigration headquarters in Tonga in view of the fact that the consular missions do not as yet have access to the immigration programme online.

16. ***Have you included the names of the listed individuals in your national "stop list" or border checkpoint list? Please briefly outline steps taken and any problems encountered.***

The list has been widely circulated and added to Tonga's border control 'alert' computer system.

17. ***How often do you transmit the updated List to your border control authorities? Do you possess the capability of searching List data using electronic means at all your entry points?***

Once the relevant authorities in Tonga have received the update list, it is immediately circulated to Border Control for their action. The list data can be searched electronically, but not yet available at all entry points (e.g. not in the three seaport entries to the Kingdom).

18. Have you stopped any of the listed individuals at any of your border points or while transiting your territory? If so, please provide additional information, as appropriate.

No. We have had no foreign passports from Middle Eastern countries (except one from Sudan, and one from Saudi Arabia and the information was immediately conveyed to Australia, New Zealand and neighbouring Pacific Island countries). The two persons interrogated were head of the Islamic school in Fiji.

19. Please provide an outline of the measures, if any, taken to incorporate the List in the reference database of your Consular offices. Have your visa issuing authorities identified any visa applicant whose name appears on the List?

There is only one visa issuing authority currently in place i.e. in the headquarters in Tonga. All visas are issued via a computer system and if a name is entered that matches a name on the list, the alert system will inform the visa officer. There have to date been no cases of visa issuing authorities identifying any visa applicant whose name appears on the List.

V. Arms Embargo

Under the sanctions regime, all States are requested to prevent the direct or indirect supply, sale and transfer, to Usama bin Laden, members of the Al Qaida organization and the Taliban and other individuals and entities associated with them, from their territories or by their nationals outside their territories of arms and related material of all types, including the provision of spare parts and technical advice, assistance, or training related to military activities (paragraph 2(c) of resolution 1390 (2002) and paragraph 1 of resolution 1455 (2003).

20. What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction (WMD) by Usama bin Laden, members of the Al Qaida organization and the Taliban and other individuals, groups, undertakings and entities

associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?

The Criminal Offences (Amendment) Act 2002 under Section 7A defines acts of terrorism to include (a) involves or causes (vii) the manufacture, possession, acquisition, supply or use of weapons, explosives or nuclear, biological or chemical weapons as well as research into and the development of biological and chemical weapons.

21. What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them?

Refer to question (20) above.

22. Please describe how your arms/arms broker licencing system, if any, can prevent Usama bin Laden, members of Al Qaida organizations and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.

Part III of the Arms and Ammunition Act (Cap 69) prohibits the possession of arms and ammunition except under a licence, which is issued by the Minister of Police.

23. Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Usama bin Laden, members of Al Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated?

There are no weapons or ammunitions produced in Tonga.

VI. Assistance and conclusion

24. Would your state be willing or able to provide assistance to other States to help them implement the measures contained in the

above-mentioned resolutions? If so, please provide additional details or proposals.

At the bilateral level, Tonga has established working relationship for the exchange of operational information on immigration, criminal activities (Police); financial institutions with countries such as the United States, Australia and New Zealand.

At the regional level, there are established contacts through the South Pacific Chiefs of Police for criminal matters; Oceania Customs Organisation with regards to customs related matters and Pacific Directors of Immigration with regards to immigration matters.

At the international level there is Interpol.

25. Please identify areas, if any, of any incomplete implementation of the Taliban/Al Qaida sanctions regime, and where you believe specific assistance or capacity building would improve your ability to implement the above sanctions regime.

Work is currently being undertaken to specify assistance and capacity building to improve Tonga's ability to implement the sanctions regime and details will be submitted in due course.